



**DEPARTMENT OF JUSTICE**

**28 CFR Part 58**

**Procedures for Completing Uniform Periodic Reports in  
Non-Small Business Cases Filed Under Chapter 11 of Title 11**

**[Docket No: EOUST 105]**

**RIN 1105-AB30**

**AGENCY:** Executive Office for United States Trustees (EOUST), Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice (Department), through its component, EOUST, issues this final rule (Rule) in accordance with Section 602 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The BAPCPA authorizes the Department to issue rules requiring uniform periodic reports (periodic reports) by debtors-in-possession or trustees in cases under chapter 11 of title 11. These periodic reports are to be used by all chapter 11 debtors who do not qualify as a “small business debtor” as defined in the Bankruptcy Code. This Rule benefits the public by streamlining existing periodic reporting requirements and eliminating more than 150 existing report forms.

**DATES:** This Rule is effective [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EOUST, 441 G Street, N.W., Suite 6150, Washington, D.C. 20530.

**FOR FURTHER INFORMATION CONTACT:** Ramona D. Elliott, Deputy Director/General Counsel or Nan R. Eitel, Associate General Counsel for Chapter 11 Practice, at (202) 307-1399 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On November 10, 2014, the Department published a notice of proposed rulemaking (NPRM), Procedures for Completing Uniform

Periodic Reports in Non-Small Business Cases Filed under Chapter 11 of Title 11. *See* 79 FR 66659. The comment period closed on January 9, 2015. In order to accommodate requests by certain commenters to meet with representatives of the EOUST to discuss the NPRM and to provide an opportunity for interested persons to express their views directly to EOUST officials, on February 17, 2016, the EOUST held a public hearing (Public Hearing) on the NPRM and reopened the comment period for an additional 85 days. *See* 80 FR 74739.

Interested persons were afforded the opportunity to participate in the rulemaking process through written comments to the NPRM during the two comment periods and through testimony at the Public Hearing. All public comments and the transcript of the Public Hearing are available at [www.regulations.gov](http://www.regulations.gov), and are discussed below. This Rule finalizes the NPRM, with changes discussed below, and implements the periodic reports to be used by debtors-in-possession or trustees in chapter 11 cases that do not qualify as “small business debtors” under the Bankruptcy Code.

### **Discussion of the Rule**

The administration of chapter 11 bankruptcy cases is entrusted to the debtor-in-possession under 11 U.S.C. 1107(a) or, if circumstances warrant, a trustee appointed under 11 U.S.C. 1104. Debtors-in-possession and trustees must account for the receipt, administration, and disposition of all property; provide information concerning the estate and the estate’s administration as parties in interest request; and file periodic reports and summaries of a debtor’s business, including a statement of receipts and disbursements, and such other information as the United States Trustee or the United States Bankruptcy Court requires. 11 U.S.C. 1106(a)(1), 1107(a); Fed. R. Bankr. P. 2015 (a)(2), (a)(3). The monthly periodic report filed during the case prior to the confirmation of a plan of reorganization is generally known as the Monthly Operating Report (MOR). The quarterly periodic report filed subsequent to the confirmation of a plan of reorganization

and before the case is closed is generally known as the Post-confirmation Report (PCR). There are currently more than 150 different local MOR and PCR forms in use around the country. This Rule would replace those local forms with a single MOR form (UST Form 11-MOR) and a single PCR form (UST Form 11-PCR) for use in all United States Trustee Program (USTP) jurisdictions. In doing so, the Rule strikes the best achievable practical balance between: (1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; (2) economy, simplicity, and lack of undue burden on persons with a duty to file periodic reports; and (3) appropriate privacy concerns and safeguards

Though debtors-in-possession and trustees may incur modest startup costs when adapting to the new forms, they will nonetheless benefit from the simplicity that the uniform forms offer and the elimination of a patchwork of localized requirements. Among other benefits, the Rule ensures that report filers need not change accounting systems when entering bankruptcy. And as noted below, the USTP will release the new uniform report forms in a dynamic PDF-fillable format to ease the completion burdens on report filers, which may be retrieved from the USTP's website at no cost.

External stakeholders will likewise benefit from the consistency that uniform MOR and PCR forms offer. The information collected by UST Form 11-MOR will be used by the court, creditors, the United States Trustee and other parties in interest to evaluate a chapter 11 debtor's progress through the bankruptcy system, including the likelihood of a plan of reorganization being confirmed and whether the case is being prosecuted in good faith. *See* 11 U.S.C. 1129(a). Much of the information is already collected in the various existing local forms, but not in a uniform or consistent way that facilitates the national compilation of data essential to transparency and accountability.

In specific cases, information collected by UST Form 11-MOR will assist the court and parties in interest in ascertaining the following: (1) whether there is a

substantial or continuing loss to or diminution of the bankruptcy estate; (2) whether there is a reasonable likelihood of rehabilitation; (3) whether there exists gross mismanagement of the bankruptcy estate; (4) whether the debtor may have violated a cash collateral order or other order of the bankruptcy court; (5) whether the debtor is timely paying postpetition taxes; (6) whether the debtor is engaging in the unauthorized disposition of assets through sales or otherwise; (7) whether the debtor is complying with its obligation to maintain appropriate insurance so as to avoid a risk to the estate or to the public; (8) whether the debtor is complying with its obligation to pay fees due under 28 U.S.C. 1930; and, (9) in the case of an individual debtor, if applicable, whether the debtor is complying with his or her obligation to pay domestic support obligations. This information contributes to the decision by the United States Trustee, or by a creditor or other party in interest, to file a motion to dismiss the bankruptcy case, to seek conversion of the case to a case under chapter 7, or to seek an order directing the appointment of a chapter 11 trustee. The information in the periodic reports is also relevant evidence that the court may consider in determining whether to grant such relief. *See, e.g.*, 11 U.S.C. 1112(b)(4)(A), (B), (C), (D), (E), (I), (J), (K), and (P); and 1104(a). The court may also use this information when considering *sua sponte* action.

The information collected by UST Form 11-PCR will be used to evaluate whether a chapter 11 debtor is performing as anticipated under a confirmed plan. Specifically, information collected by UST Form 11-PCR will assist the court and parties in interest in ascertaining the following: (1) whether a debtor is able to substantially consummate a confirmed plan; (2) whether the debtor is in material default under a confirmed plan; and (3) whether the debtor is paying fees required under 28 U.S.C. § 1930. If the debtor fails to perform under the confirmed plan, the United States Trustee, creditors, or other parties in interest may bring an appropriate motion to dismiss the case, revoke a confirmed plan,

or convert the case to a case under chapter 7. *See* 11 U.S.C. 1112(b)(4)(K), (M), and (N); 11 U.S.C. 1144.

The periodic reports include sufficient information to inform creditors and other interested parties of the debtor's financial affairs, but are simple enough to provide ready, meaningful access to the information. Moreover, the periodic reports accomplish the goals of uniformity and transparency regarding a debtor's financial condition and business activities.

The periodic reports are uniform and will be filed as "smart forms" with the United States Bankruptcy Court in which the chapter 11 case is pending via the court's Case Management/Electronic Case Filing System (CM/ECF). A "smart form" is a document that is data-embedded. When the document is saved into the industry standard Portable Document Format (PDF), stored data tags are then available for extraction and searching. In contrast, when a form is not data-embedded, the PDF is simply an image of the form, and the data is not uniformly available for searching or extraction. The data-embedded form builds upon the existing Adobe PDF/A standards (Versions 1.4-1.7). Once the periodic reports are finalized, the current data schema (DTD) will be found on [www.justice.gov/ust](http://www.justice.gov/ust). Once the periodic reports are finalized, debtors-in-possession, chapter 11 trustees, and members of the public may obtain blank "smart form" periodic reports from the USTP website at [www.justice.gov/ust](http://www.justice.gov/ust) or from their respective vendors of case management software.

Once filed with a bankruptcy court, the periodic reports will be available to the general public at the office of the clerk of the United States Bankruptcy Court where the case is pending during the hours established by the bankruptcy clerk of court. Members of the public should contact the clerk's office of individual bankruptcy courts to obtain information about the policies and procedures for inspection of periodic reports filed in any particular case. Periodic reports filed in cases are also available through the Internet

by accessing the website for the Administrative Office of the United States Courts known as Public Access to Court Electronic Records (PACER) at [www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov). In order to access court records through PACER, users must register and obtain a user name and password. In addition, users must pay a fee for obtaining records through PACER.

Finally, the promulgation of the periodic reports accomplishes Congress's directive that the Department issue uniform forms for periodic reports for debtors-in-possession and chapter 11 trustees. The forms will also assist policy-makers, scholars, and the public in better understanding the bankruptcy system. Instead of many different versions of the periodic reports, debtors-in-possession and chapter 11 trustees will use the same two forms. The consistency and uniformity of the periodic report forms will also assist the public, creditors and other parties-in-interest in understanding the administration of chapter 11 bankruptcy cases, especially when such parties are located in a different region or jurisdiction from where the bankruptcy case is located. Scholars and members of the public may also be able to obtain aggregate data with the necessary software. Uniformity and consistency in the information collected may also facilitate national aggregation, which will assist Congress in its efforts to analyze bankruptcy trends and make policy decisions, without imposing significant additional burdens upon trustees and debtors-in-possession.

### **Discussion of Public Comments**

The EOUST received nine public submissions in response to the first public comment period on the NPRM and three public comments in response to the second public comment period on the NPRM. The EOUST heard testimony of five witnesses at the Public Hearing. The EOUST considered all of the comments and the testimony of the witnesses, and in response, the EOUST has modified the Rule. These modifications include clarifying, revising, or expanding various provisions, requiring the submission of

three standard financial statements (non-individual debtors only), and making technical edits. In addition, the EOUST has modified the periodic reports and instructions. Some changes were made to conform the forms and instructions to the Rule modifications and other changes were made to clarify the forms and instructions. Summaries of the comments and the EOUST's responses are discussed below.

#### A. General Comments

##### 1. Mandatory Information v. Supporting Documentation

*Comment:* The commenters expressed divergent views regarding whether the Rule requires report filers to provide too little or too much information on UST Form 11-MOR. The tension, in this regard, was between collecting the minimum information required by the statute and collecting more comprehensive business information than the NPRM proposed.

For example, one commenter stated that the MOR should contain information similar to that required by the Securities and Exchange Commission (SEC) for publicly traded companies. The commenter further advocated that the supporting documentation listed in section 58.8(d)(1) through (10) of the NPRM should be mandatory in any case with assets exceeding \$100 million. The NPRM identified:

- (1) A statement of cash receipts and disbursements;
- (2) A balance sheet;
- (3) A profit and loss statement;
- (4) An aged summary of accounts receivable;
- (5) An aged summary schedule of postpetition liabilities;
- (6) A statement of capital assets;
- (7) A schedule of payments to professionals;
- (8) A schedule of insider payments;
- (9) Bank statements and reconciliations; and

(10) Descriptions of asset sale transactions.

The commenter further suggested that parties in interest should have the right to seek supplemental documentation from debtors with assets less than \$100 million by petitioning the United States Trustee or the court. The EOUST also received a comment that debtors should be required to include projections, risk factors, potential conflicts of interest, and other material financial information, including management discussions and analysis, insider transactions, and material company events. Another commenter asserted that requiring very detailed financial reports would be less burdensome on the USTP, creditors, and governmental authorities than requiring more extensive supporting documents on an ad hoc basis, and that smaller business and individual debtors may seek to be excused from preparing certain supplemental documents.

By contrast, one commenter stated that the Rule asks too much and would be unduly burdensome, particularly on individual debtors. Another commenter noted that providing detailed supplemental documentation to any party in interest may be problematic if there are no confidentiality or non-disclosure agreements in place. The EOUST also received a comment asserting that the debtor should be required to meet with the United States Trustee at the start of the case to discuss the debtor's reporting requirements and capabilities, and agree on the supplemental documentation that may be required.

*Response:* The Rule strikes a reasonable balance between ensuring that the debtor provides sufficient information to enable the court, creditors, and other parties in interest to ascertain the debtor's financial condition and not overburdening the report filer. In addition, the use of a uniform form ensures that certain statistical information is accessible as required by the statute. The Rule and the periodic report forms achieve this balance, while remaining adaptable to the circumstances of both individual debtors and large corporate enterprises. The more extensive reporting requirements suggested by two



of the commenters shift that balance by proposing to make far more information mandatory for a significant segment of chapter 11 debtors. Most debtors hold less than \$100 million in assets and are not publicly traded companies subject to ongoing SEC reporting. And, as a witness noted at the Public Hearing, entities subject to SEC reporting only submit that detailed information on a quarterly and annual basis, rather than monthly. Requiring information akin to the public disclosures mandated by the SEC is impractical, expensive, and burdensome. The periodic reports are not a substitute for SEC filings, nor are SEC filings a substitute for periodic reports. If parties in interest seek this information, it is available from all publicly traded debtors in their SEC filings. Finally, the Rule does not abridge parties' rights to seek additional information through informal inquiry or in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

The EOUST agrees, however, that certain financial statements should be mandatory for every non-individual debtor. Accordingly, the EOUST has modified the NPRM to require non-individual debtors to file:

- (1) A Statement of Cash Receipts and Disbursements;
- (2) A Balance Sheet; and
- (3) A Statement of Operations (Profit or Loss Statement) with each Monthly Operating Report.

Virtually every debtor has or should maintain these three common financial statements. Under current USTP practice, various field offices often require these three financial statements as attachments to their local periodic report forms. The EOUST has created a new section 58.8(d)(3) providing for the submission of additional supporting documentation at the discretion of the United States Trustee, which supporting documentation was previously provided for in former section 58.8(d)(4)-(11). In cases

requiring formal enforcement, the USTP must seek relief from the bankruptcy court. *See* 11 U.S.C. 1112(b)(4).

The EOUST also agrees with the commenters who suggested that the debtor and the United States Trustee should confer early in the case, whether at the Initial Debtor Interview (“IDI”) or some other initial meeting, to discuss the debtor’s reporting capabilities and the supplemental documentation that the debtor will be required to file. Field offices typically schedule IDIs within the first few weeks after the petition date and before the first scheduled meeting of creditors under 11 U.S.C. 341 (the “Section 341 Meeting”). The EOUST modified the instructions for UST Form 11-MOR to clarify that this initial meeting should occur before both the first MOR due date and the Section 341 Meeting.

## 2. Publicly Available Data

*Comment:* The EOUST received a comment asserting that data collected in the MORs and PCRs should be publicly available in a national searchable database. The commenter suggested that the phrase “may be data enabled to facilitate the national compilation of data” in the preamble to the Rule should be changed to “shall be data enabled to facilitate the national compilation of data.”

*Response:* The EOUST accepts the recommendation by clarifying how the periodic report forms will function as electronic documents. Section 58.8(j)(2) of the Rule clearly provides that the “Periodic Reports shall be filed via the United States Bankruptcy Courts’ Case Management/Electronic Case Filing System (CM/ECF) as a ‘smart form,’ meaning the reports are data-embedded.”

The EOUST has replaced the term “data-enabled” in the NPRM with “data-embedded.” The periodic report forms will be read only data-embedded forms, which are the type of forms used by the U.S. Courts.

The EOUST rejects the suggestion that the EOUST should create a publicly searchable database of information collected from the periodic reports. The statute does not require the creation of a publicly searchable database. Instead, the statute requires that the periodic reports “facilitate compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or appropriate media.” 28 U.S.C. 589b(b). Accordingly, the public can obtain the filed periodic reports from any bankruptcy clerk’s office and can also extract the embedded data through PACER with appropriate software.

### 3. Certification, Service, Filing Deadlines

#### a. Certification of Periodic Reports (§ 58.8(i))

*Comment:* One commenter asserted that retaining the periodic reports with original “wet” signatures for five years is burdensome and contrary to the Paperwork Reduction Act (PRA). Another commenter suggested that retaining periodic reports with either original signatures or an electronic copy of the signed periodic report should be sufficient.

*Response:* The EOUST concludes that retaining the periodic reports with original holographic signatures is not burdensome. The requirement does not create additional, duplicative, or unnecessary paperwork; it merely ensures that the original document is preserved for a period of time. The retention of original holographic signatures is important to the efforts of the EOUST, as well as the Department of Justice, to combat abusive bankruptcy practices through criminal prosecution and civil enforcement. Although defendants repudiate signatures in a small minority of cases, the availability of the original signature is key to overcoming such a defense, and, also, in the view of prosecutors, deters defendants from contesting the authenticity of signatures in the first instance. In addition to the authenticity of the signature itself, electronic signatures are more easily manipulated and appended to documents without the authorization or

knowledge of the signatory. *See also* Letter from James M. Cole, Deputy Att’y Gen., U.S. Dep’t of Justice, to the Hon. Jeffrey S. Sutton, Chair, Comm. on Rules of Practice and Procedure, Admin. Office of the U.S. Courts (Feb. 13, 2014) (on file with author), *available at* <https://www.regulations.gov/document?D=USC-RULES-BK-2013-0001-0128>.

In addition, preservation of the periodic reports with original signatures is not a collection of information from the public under the PRA. *See* 44 U.S.C. § 3506(c)(1). Even if the PRA were implicated, the EOUST provided the requisite notice under the PRA that retention of documents with original signatures will be required. *See* 44 U.S.C. 3506(c)(2).

b. Declaration Upon Knowledge and Belief

*Comment:* One commenter suggested that the periodic reports should be signed under penalty of perjury with the qualification that the report and any attachments thereto are true and correct to the best of the signer’s “knowledge and belief.”

*Response:* The EOUST declines to add the qualification. The EOUST concluded that the “knowledge and belief” language may contradict or undermine the purpose of signing the periodic reports under the penalty of perjury, which is a stricter standard, to ensure that the information provided in the periodic reports is reliable and accurate. Moreover, the “knowledge and belief” language is not consistent with the official bankruptcy forms promulgated by the Judicial Conference of the United States. For example, Official Form 101 requires debtors to certify that they “have examined this petition, and [they] declare under penalty of perjury that the information provided is true and correct.” Thus, adding “knowledge and belief” language to the periodic reports would inappropriately create inconsistent standards for truthfulness.

c. Signature on the UST Form 11-PCR

*Comment:* The EOUST received a comment that the signature line of the UST Form 11-PCR should be changed to add the designation “Plan Trustee” or “Plan Administrator.”

*Response:* The EOUST agrees with this recommendation, in part. Rather than identify an exhaustive number of report filer titles, the EOUST modified the signature line to provide for any authorized signatory.

d. Service of the Periodic Reports

*Comment:* The EOUST received several comments regarding service of the periodic reports. Two commenters stated that the debtor should not be required to serve UST Form 11-MOR on each member of any Official Committee of Unsecured Creditors or on any governmental taxing authority because doing so would be unduly burdensome. One of these commenters also stated that confidentiality issues may arise if the Rule requires the debtor to serve supplemental documentation to “any party in interest” that has not agreed to confidentiality or non-disclosures. The same commenter also stated that UST Form 11-PCR should be served on any post-confirmation committee.

*Response:* The EOUST agrees that service upon individual members of the committee is unnecessary when the committee has engaged counsel and has modified the Rule accordingly. The EOUST disagrees with the suggestion that the MOR should not be served upon taxing authorities. Periodic reports must specify whether tax returns have been timely filed and whether tax payments have been timely made since the date of the order for relief. 28 U.S.C. 589b(e)(5). Service of the periodic reports on taxing authorities provides the relevant taxing authorities with a meaningful opportunity to review the representations made. The EOUST also modified section 58.8(b) of the Rule to permit taxing authorities to opt out of being served with the periodic reports. Finally,

concerns about confidentiality as to supplemental information may be addressed on a case by case basis at the initial meeting between the United States Trustee and the debtor.

e. Filing Deadlines (§§ 58.8(e), (g))

*Comment:* One commenter stated that the Rule should establish a uniform national due date for all periodic reports of the 25th of each month. Two commenters focused on the initial due date for the UST Form 11-MOR. One stated that the first report should be due in the second full month of the case and should cover the period from the filing date to the end of the first full month. A second commenter stated that the initial report should be filed by the earlier of (1) the 60th day after the order for relief or (2) the 30th day after the end of the first full calendar month after the order for relief. With respect to the UST Form 11-PCR, the EOUST received one comment that the Rule should clearly state that the Post Confirmation Report is filed quarterly only after the plan is confirmed. Another commenter noted that the phrase “confirmation of the plan” is unclear as to whether it is the date of entry of the confirmation order or the effective date of the plan. Finally, one commenter advocated that the Rule should permit the flexibility to make the filing deadline coincide with SEC reporting deadlines for those debtors that are public registrants.

*Response:* The EOUST agrees that a uniform due date for periodic reports should be established, where practicable, but declines to adopt any other due date suggestions. The EOUST modified the Rule to provide that both periodic reports are due on the 21st day of the month immediately following the reporting period, subject to any local bankruptcy rule that requires a different due date. The Rule balances the practical concerns of a report filer, other parties’ need for information early in a case, and any local bankruptcy rules. A 60-day delay in filing the initial MOR would permit a debtor to operate with less transparency for the critical first two months of the case.

Additionally, the EOUST has maintained the same important balance in setting the initial MOR due date. The 20th of the month cut off addresses the concern regarding the burden of filing a partial month report by not requiring the filing of a MOR for a period that is fewer than ten days. The EOUST also declines to adjust the filing deadline for debtors who are public registrants so that it coincides with SEC reporting deadlines. The uniform deadline provides necessary predictability, while maintaining the flexibility to permit consistency with local bankruptcy rules. Because they require different reported information, quarterly SEC filing deadlines are not relevant to the monthly periodic reports. Finally, the EOUST has modified the Rule and instructions to clarify that Form 11-PCR is required to be filed following the effective date of a confirmed plan.

#### 4. Accounting Methods (§ 58.8(h))

##### a. Generally Accepted Accounting Principles

*Comment:* Two commenters stated that Generally Accepted Accounting Principles (GAAP) may not be the appropriate accounting method and will be unduly burdensome for those debtors who do not regularly use it. One of these commenters added that GAAP accounting would be particularly difficult for individual debtors because most individuals do not use this accounting method, nor do they keep books in the same manner businesses do. The other commenter added that reference in the Rule to “Statement of Position 90-7” should be changed to Financial Accounting Standards Board Accounting Standards Codification (FASB ASC) 852, Reorganizations.

*Response:* The EOUST concludes that debtors who do not already follow GAAP will not be required to adopt GAAP to prepare the periodic reports. Accordingly, the EOUST has modified the Rule to permit debtors to complete the periodic reports using the accounting method the debtor used prepetition. The EOUST has also removed references to Statement of Position 90-7 and has replaced it with a reference to Financial

Accounting Standards Board Accounting Standards Codification (FASB ASC) 852, Reorganizations.

b. Inventory Costing Methodology

*Comment:* One commenter asserted that the debtor should be required to disclose its inventory costing method as well as any change to such method.

*Response:* The EOUST agrees that this information is beneficial. While the Rule required no modifications, the EOUST has modified the UST Form 11-MOR and the instructions to include costing methodology disclosure.

B. Comments on Specific Provisions of the Rule

1. Professional Fees

a. Reporting Professional Fees on an as Incurred or as Approved Basis (§§ 58.8(b)(8), 58.8(f)(3))

*Comment:* Five commenters stated that the debtor should be required to report fees as incurred rather than, or in addition to, those approved by the bankruptcy court. The commenters assert that reporting fees as incurred would allow for earlier monitoring of fees generally, would provide a more timely picture of the debtor's cash flow, and would provide notice of fees that are incurred but do not necessarily require court approval, such as fees paid to a secured creditor under loan agreements or financing orders or fees paid to ordinary course professionals.

*Response:* The statute specifically provides that the periodic reports "shall" include "all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief ...," and the language in the Rule at section 58.8(b)(8) mirrors this provision. *See* 28 U.S.C. 589b(e)(6). The EOUST concludes that debtors should provide the information required by the statute, and if necessary, on a case by case basis and as requested by the United States Trustee, provide cash disbursement registers or ledgers as permitted by section 58.8(d)(3)(H) of the Rule.



In addition, when interim fee procedures exist, the amount of fees “as incurred” is available from other sources such as periodic fee applications and monthly fee statements of estate professionals. The additional supporting documentation pertaining to cash disbursements and these other sources present a meaningful picture of the financial operations of the debtor’s business.

b. Itemization of Specific Professional Fees (§ 58.8(b)(8))

*Comment:* Seven commenters stated that the MOR should provide separate line items for each professional with a more detailed description of the professional’s role in the case to better understand case staffing and costs. One commenter advocated that the breakdown of professional fees should be by type (bankruptcy professional; nonbankruptcy professional; ordinary course professionals; secured lender; committee or other professionals). Others suggested that itemization by firm and type of service (*e.g.*, legal or accounting) would be sufficient, and one commenter suggested that the EOUST should provide a better definition of the term “nonbankruptcy matters” in order to avoid inconsistent application of that term. One commenter stated that requiring individual debtors to separate bankruptcy from non-bankruptcy fees would be burdensome. Two commenters added that there should be a specific line item for efficiency counsel because separate disclosure of efficiency counsel fees would allow a more thorough review of how each firm is used and would encourage the appropriate assignment of tasks. A third commenter, while not specifically referring to efficiency counsel, agreed with this rationale.

*Response:* The EOUST agrees that professional fees should be reported in more detail for the reasons given by the commenters. Three kinds of professional fees are paid in a bankruptcy case:

- (1) Those allowed and approved by the court after a fee application (traditional bankruptcy fees);

- (2) Those approved to be paid under an “ordinary course professional” order, and generally capped by a certain amount each month and in the aggregate, and requiring a fee application if the amount billed exceeds the cap (OCP fees); and
- (3) Those paid to professionals based upon contractual rights, such as fees for secured creditors’ counsel that are authorized to be paid under a financing, adequate protection, or cash collateral order (contractual fees).

The statute requires that fees incurred on behalf of the debtor be reported separately from “those that would have been incurred absent a bankruptcy case.”

28 U.S.C. 589b(e)(6). OCP fees will often be for non-bankruptcy work, such as fees incurred in a state court tort action, and are required to be reflected on the periodic reports. However, unlike traditional bankruptcy fees and OCP fees, contractual fees are not limited or reviewed by the court. It may also be difficult to breakout which contractual fees were incurred in connection with the bankruptcy case and which contractual fees would have been incurred regardless of whether a bankruptcy case was filed. Requiring a debtor to report a secured lender’s fees on its periodic reports in similar detail to estate professionals’ fees would impose undue burdens on the report filer, because it would require the report filer to find out this information from third parties who may not be forthcoming. Finally, the EOUST must also reject the suggestion not to require individual debtors to segregate bankruptcy from nonbankruptcy fees because the statute requires this segregation. *See* 28 U.S.C. 589b(e)(6).

The EOUST has modified the form and the instructions for both the MOR and PCR to add line items for lead counsel, efficiency counsel, co-counsel, local counsel, financial professionals, and other professionals. If warranted by the facts of the case, the United States Trustee may request that the debtor attach a supplemental schedule that identifies all fees and expenses for professionals employed in the bankruptcy case per renumbered section 58.8(d)(3)(D) of the Rule.

The EOUST also agrees that the definition of “nonbankruptcy matters” should be clarified. Accordingly, the EOUST has added a definition of “nonbankruptcy matters” in the periodic report instructions.

2. Individual Chapter 11 Debtors (§ 58.8(c))

a. Separate UST Form MOR-11 and PCR-11 for Individual Debtors.

*Comment:* One commenter advocated that a separate form should be created for individual debtors because the commenter believed that the proposed forms were too complicated. Another commenter suggested that high wealth individual debtors with complex financial structures should use a more detailed MOR form than that proposed.

*Response:* The statute prescribes “uniform forms for--periodic reports by debtors in possession or trustees.” 28 U.S.C. 589b(a)(2). It does not specify separate forms for individual debtors, high wealth or otherwise. The EOUST has revised the forms and instructions, however, to clarify which sections apply to individual debtors. The EOUST has modified Part 8 of UST Form 11-MOR to better reflect the types of disbursements typically made by individual debtors. If further information is needed from high wealth individual debtors, the United States Trustee may exercise discretion and request it. And finally, parties seeking more detailed information from debtors may seek that information through informal inquiry or in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

b. Requirements to Report Certain Business Activity is Burdensome and Confusing to Individual Debtors.

*Comment:* Two commenters focused on the burden that would be placed on individual chapter 11 debtors if they were required to provide income statements, statements of operations, or other supporting documents identified in section 58.8(d) of the NPRM because most individual debtors do not keep these kinds of records. Another

commenter suggested that individual debtors should be required to provide this information unless they obtain a waiver from the United States Trustee.

*Response:* The NPRM imposed identical document production requirements on individual and non-individual debtors. The EOUST considered the competing comments regarding the scope of the supplemental documentation requirements placed on individual debtors and has modified section 58.8(d) and has added new section 58.8(d)(2) to provide that individuals need not provide supplemental documentation unless the United States Trustee requests it in the United States Trustee's discretion.

### 3. Jointly Administered Cases

*Comment:* One commenter stated that the Rule should clarify whether reporting in jointly administered cases should be on a per entity, nonconsolidated basis or whether jointly administered debtors may be permitted to submit one single consolidating form.

*Response:* The EOUST agrees and has modified the Rule to clarify that periodic reports in jointly administered cases shall be filed on a per entity, nonconsolidated basis. Use of a single consolidating form in jointly administered cases would make data extraction difficult and would require the creation of a separate form and a separate data-extraction process for jointly administered cases, which would impose undue costs and burdens. Moreover, the EOUST has observed that some debtors that presently file consolidating forms in certain districts are not providing sufficient information on a per-debtor basis. Requiring each debtor in a jointly administered case to file a separate MOR addresses this problem. Accordingly, the EOUST has modified sections 58.8(b) and 58.8(f) to clarify that, in jointly administered cases, unless otherwise required by the United States Trustee in the United States Trustee's discretion, each jointly administered debtor is required to file a separate periodic report on a nonconsolidated basis. The EOUST also made conforming changes to the instructions for each form.

### 4. Full-Time Employees (§ 58.8(b)(3))

*Comment:* One commenter suggested that the Rule should require the debtor to report both full-time (or full-time equivalent) and part-time employees in order to reflect a fuller picture of whether jobs were saved or created during the bankruptcy case.

*Response:* The statute requires that the periodic reports include the “number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed.” 28 U.S.C. 589b(e)(6). The Rule conforms to the statute.

The EOUST considered the potential benefits offered by the additional categories of full-time equivalent and part-time employees. Though reporting the additional employee categories might provide a broader picture of the debtor’s workforce, the EOUST concludes that the additional categories would be too subjective and variable, and therefore, would be unlikely to provide meaningful information regarding whether jobs were saved or created.

#### 5. Taxes and Insurance (§§ 58.8(b)(9), (b)(14))

*Comment:* Two commenters suggested that the debtor should be required to itemize what tax and insurance payments have been made. One of those commenters further inquired whether risk management products (such as swaps or other derivatives) are considered “insurance” for the purposes of the MOR.

*Response:* The EOUST agrees that itemization of tax and insurance payments would be beneficial and has modified UST Form 11-MOR to include additional lines for reporting the different types of tax and insurance payments. The Rule does not require amendment because it very broadly requires the reporting of tax and insurance payments. Section 58.8(d)(3) further permits the United States Trustee to request additional documentation on a case by case basis, if necessary, to present a complete picture of the financial operations of the debtor. Finally, the EOUST has modified the form instructions to clarify that risk management products such as swaps and other derivatives are not considered insurance for the purposes of the MORs.

6. Payments Made on Prepetition Debt (§ 58.8(b)(10))

*Comment:* One commenter stated that the Rule should not limit disclosure of payments toward prepetition debt to those solely to secured lenders or lessors, but should include payments on unsecured debt as well. Another commenter noted that the Rule should include undersecured debt and debts in which the security interest is in dispute.

*Response:* The EOUST concludes that the wording in draft section 58.8(b)(10) could give rise to different and contradictory interpretations. Therefore, the EOUST has modified section 58.8(b)(10) to clarify that report filers should include all payments of prepetition debt (including unsecured debt).

7. Payments to or on Behalf of Insiders (§ 58.8(b)(12))

*Comment:* Two commenters stated that the report filer should be required to explain the nature and type of insider transactions, rather than simply list the payments made.

*Response:* The EOUST agrees that additional information regarding unusual transactions, such as insider transactions, is often beneficial. The Rule does not require amendment because the United States Trustee has the discretion to request this documentation under former section 58.8(d)(11) (renumbered as section 58.8(d)(3)(E)). UST Form 11-MOR has been modified to add space for additional information concerning insider transactions.

8. Cash Flow and Other Statements (§ 58.8(d))

*Comment:* One commenter stated that the Rule should require report filers to submit the following statements:

- (1) Statement of changes in cash flow;
- (2) Statement of changes in equity (deficit); and
- (3) Intercompany account balances.

*Response:* While the EOUST agrees that these documents may be valuable on a case by case basis, the Rule does not require amendment because these items are already included in former section 58.8(d)(11) (renumbered as section 58.8(d)(3)(I)). The EOUST has modified the instructions for UST Form 11-MOR to include these items in the list of supplemental documentation the United States Trustee may request.

9. Balance Sheets, Statement of Capital Assets (§ 58.8(d))

*Comment:* One commenter stated that the debtor's balance sheet should mirror the disclosures required by the SEC's Regulation S-X and that the Statement of Capital Assets should include the original cost, amortization to date, amortization method and life for each major component of capital assets.

*Response:* The EOUST disagrees. The MOR does not supplant required SEC filings. Parties in interest can obtain this information from public companies' securities filings. Moreover, requiring these disclosures from non-publicly traded companies and individuals may impose undue burdens.

10. Accounts Receivable (§ 58.8(d))

*Comment:* One commenter stated that the report filer should be required to report accounts receivable both gross and net of any reserves. The commenter also stated that the debtor should be required to report the total of accounts receivable both prepetition and postpetition because prepetition accounts receivable may not be available.

*Response:* The EOUST recognizes that additional information concerning accounts receivable may be beneficial, but disagrees with the comment and concludes that accounts receivable should be reported consistent with the debtor's prepetition accounting practices. Though the Rule does not require amendment, the EOUST has modified the instructions to UST Form 11-MOR to permit the reporting of additional detail regarding accounts receivable.

11. Post-confirmation Reports: Disbursements and Transfers (§ 58.8(f))

*Comment:* One commenter asserted that the report filer should be required to report cash and property transfers separately. Another commenter stated that the report filer should be required to report noncash distributions of securities in the reorganized debtor and the value of noncash distributions.

*Response:* The EOUST agrees that separate reporting of the information requested by both commenters would be beneficial. The EOUST has modified the UST Form 11-PCR to include line items for transfers of securities and other noncash property, though the Rule does not require amendment. The statute also requires the debtor to report, “by class, the recoveries, expressed in aggregate dollar values.” 28 U.S.C. 589b(e)(7). Thus, the EOUST has added a line to the PCR instructions requiring those debtors making distributions of securities or other property to use the valuation method described in the disclosure statement, regardless of the value of the securities or other property on the distribution date. If the disclosure statement does not give a value for the securities or other property or does not describe the valuation method, the report filer should provide an explanation of how the securities or other property have been valued for the purposes of the PCR.

### **Summary of Changes in Final Rule**

The final Rule differs from the NPRM in the following ways:

1. Section 58.8(a) has been modified to include an additional clarifying sentence providing that the Rule does not excuse, supersede, or otherwise modify any applicable nonbankruptcy reporting obligations.
2. Section 58.8(b) has been modified to permit taxing authorities to opt out of being served with periodic reports.
3. Section 58.8(b) and section 58.8(f) now provide that in jointly administered cases each debtor, trustee, reorganized debtor, or other authorized party charged with administering a confirmed plan is required to file a separate periodic report



on a nonconsolidated basis, unless otherwise required by the United States Trustee in the United States Trustee's discretion.

4. Section 58.8(b)(10) has been modified to require the reporting of all payments of unsecured debt.

5. Section 58.8(d)(1) now requires non-individual debtors to file:

- (a) A statement of cash receipts and disbursements;
- (b) A balance sheet; and
- (c) A statement of operations (profit and loss statement)

with each MOR.

6. Section 58.8(d)(2) has been added to provide the United States Trustee with the discretion to require individual debtors to file the documentation identified in § 58.8(d)(1). Section 58.8(d)(3) provides the United States Trustee with the discretion to require any debtor or trustee to provide any other supporting documentation necessary to present a complete picture of the financial operations of the estate.

7. Former §§ 58.8(d)(4) through (11), that provide for the submission of additional supporting documentation at the discretion of the United States Trustee, have been moved into new section 58.8(d)(3).

8. Sections 58.8(e) and (g) now provide that MORs and PCRs are due by the 21st day of the relevant month, subject to any local bankruptcy rule that requires a different due date. Section 58.8(g) also clarifies that PCR forms are required to be filed following the effective date of a confirmed plan.

9. Section 58.8(h) clarifies that a debtor may use whatever accounting method the debtor used prepetition and does not require GAAP of all debtors. Section 58.8(h) also deletes the reference to "Statement of Position 90-7" and replaces it

with “Accounting Standards Codification 852, Reorganizations, Financial Accounting Standards Board.”

10. The term “data-enabled” in § 58.8(j)(2) has been replaced with the term “data-embedded.”

### **Executive Orders 12866, 13563, and 13771 - Regulatory Review**

This Rule has been drafted and reviewed in accordance with

(1) Executive Order 12866, “Regulatory Planning and Review” section 1(b), Principles of Regulation;

(2) Executive Order 13563 “Improving Regulation and Regulatory Review” section 1(b) General Principles of Regulation; and

(3) Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs” section 3(a), Annual Regulatory Cost Submissions to the Office of Management and Budget (OMB).

This Rule is not a “significant regulatory action” under Executive Order 12866, and, accordingly, this Rule has not been reviewed by OMB.

Executive Orders 12866 and 13563 direct all agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 emphasizes the need to identify incremental costs and requires approximation of the total costs or savings associated with the regulation over future fiscal years. The Department has assessed the costs and benefits and costs savings of this regulation and believes that the regulatory approach selected maximizes net benefits and, after minimal initial costs, will yield costs savings.

It is estimated that the cost to the government for developing these periodic reports is approximately \$67,000. The estimated cost to develop a system to store information extracted from these reports and to analyze the data is approximately \$144,000. The USTP anticipates using existing information technology resources to meet the costs associated with developing the periodic reports and a system to store the information extracted from the reports. The USTP expects the initial investment to be offset within the first four years of implementation. Beyond these amounts, there will be no additional cost to the government or to the public, and costs savings to the government are expected from updating these reports to an electronic format.

Because debtors-in-possession and trustees are already required to complete periodic reports, the Rule is not a new layer of regulation. *See* 11 U.S.C. 704, 1106, and 1107. Moreover, the Rule imposes no obligations on the general public because only debtors-in-possession and trustees for chapter 11 bankruptcy cases are responsible for filing periodic reports. By contrast, the information disclosed in the periodic reports is of vital importance to the bankruptcy process. The reported information assists the courts, creditors, and other stakeholders in assessing, among other things, the likelihood of rehabilitation, whether the bankruptcy estate has been mismanaged, and whether the estate maintains adequate insurance coverage to protect both creditors and the general public from harm.

Periodic report forms are currently used across the country, but the format and content of the forms vary by region, office, and district. The use of congressionally required uniform forms for periodic reports will assist policy-makers, scholars, and the public in better understanding the bankruptcy system. Instead of many different versions of periodic report forms, currently numbering over a hundred, debtors-in-possession and trustees will use the same data-embedded forms.

Requiring a uniform periodic report will aid external stakeholders by providing consistency across different jurisdictions and also helping to streamline the processing of reports by the USTP. Uniformity and consistency will also assist counsel, creditors, and other stakeholders with a national presence in their analysis of the disclosed information. Additional administrative requirements for external parties are expected to be minimal. On the basis of these considerations, the Rule for uniform periodic reports would provide net benefits to the USTP and the general public.

The total estimated cost to implement and maintain the proposed system is \$211,000. This cost is expected to be offset over time by increased efficiency in the data entry process. The USTP has processed approximately 100,000 periodic reports on average over the past 10 fiscal years, with each periodic report requiring 1-2 minutes of data entry time on average. At an estimated salary of \$56/hour plus benefit costs, average data entry processing costs for periodic reports total approximately \$124,000. Continuing the current process would cost approximately \$480,000 in 2016 dollars through 2026, while the anticipated savings from implementing the proposed process would exceed the upfront implementation cost by over \$150,000 during that time span. These savings would be sustained over time, with an annualized cost savings of approximately \$113,000 in perpetuity. Such savings are critical because they will allow the USTP to redeploy scarce resources to other important priorities.

In addition to the tangible cost savings expected to be generated, there would be a number of intangible benefits. The benefits considered include the benefits to the chapter 11 debtors-in-possession and chapter 11 trustees who are obligated to file periodic reports, as well as benefits to the courts, creditors, parties in interest, bankruptcy professionals who represent the various constituencies in the cases, the USTP, and external stakeholders including the public, policy-makers, and scholars.

The Rule benefits report filers by replacing outdated paper forms which vary by local jurisdiction with standardized, updated forms in an electronic format that promotes clarity and certainty. The Rule benefits the court, creditors, and other parties in interest in bankruptcy cases by simplifying the intake, organization, and understanding of these periodic reports.

The Rule benefits professionals who represent debtors-in-possession in bankruptcy cases in multiple districts by reducing the burden associated with identifying and complying with varying local requirements in filing periodic reports. In other words, uniformity and consistency will allow these professionals to operate more efficiently and with greater accuracy.

The Rule benefits the USTP by standardizing the collection of congressionally required data elements in an electronic format that facilitates automated analysis, therefore streamlining and reducing the time necessary to review and draw conclusions from the information provided on the forms.

Lastly, the Rule benefits the public by making the collection of information mandated by the Bankruptcy Code and Rules more transparent, thereby promoting greater understanding of the bankruptcy system and its stakeholders. Policy-makers and scholars in particular will benefit from the accessibility of electronic bankruptcy data, which can be more readily aggregated, analyzed, and shared in the updated, standardized format than in the current idiosyncratic local formats, which require manual collection and review.

In sum, the Department is confident the Rule provides multiple benefits to the public, while imposing minimal initial streamlining costs borne by the USTP that will yield substantial cost savings in future fiscal years.

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this Rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that chapter 11 small business debtors are not required to complete these periodic reports. Pursuant to Section 435 of the BAPCPA, the Judicial Conference of the United States has developed a periodic report, entitled Official Form 425C “Monthly Operating Report for Small Business Under Chapter 11,” for use by small business debtors as defined by the Bankruptcy Code. *See* 11 U.S.C. 101(51D), 308.

#### **Paperwork Reduction Act**

These periodic reports are associated with an open bankruptcy case. Therefore, the exemption under 5 CFR 1320.4(a)(2) applies.

#### **Unfunded Mandates Reform Act of 1995**

This Rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This Rule does not include a federal mandate that may result, in the aggregate, in the annual expenditure by State, local, and tribal governments, or by the private sector, of more than the annual threshold established by the Act (\$123 million in 2005, adjusted annually for inflation). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This Rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This Rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or have significant adverse effects on the ability of United

States-based companies to compete with foreign-based companies in domestic and export markets.

### **Privacy Act Statement**

28 U.S.C. 589b authorizes the collection of the information in the periodic reports. As part of the debtor-in-possession's or trustee's reporting obligations, the United States Trustee will review the information contained in these reports. The United States Trustee will not share the information with any other entity unless authorized under the Privacy Act, 5 U.S.C. 552a *et seq.* EOUST has published a System of Records Notice that delineates the routine use exceptions authorizing disclosure of information. *See* 71 FR 59818, 59819 (Oct. 11, 2006), JUSTICE/UST-001, "Bankruptcy Case Records and Associated Files." Providing this information is mandatory under 11 U.S.C. 704, 1106, and 1107.

### **List of Subjects in 28 CFR Part 58**

Bankruptcy; Trusts and Trustees

For the reasons set forth in the preamble, 28 CFR part 58 is amended as set forth below.

### **PART 58--[AMENDED]**

1. The authority citation for part 58 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202; 1302, 1328(g); 28 U.S.C. 509, 510, 586, 589b.

2. Add § 58.8 to read as follows:

#### **§ 58.8 Uniform Periodic Reports in Cases Filed Under Chapter 11 of Title 11.**

(a) *Scope.* The requirements of this section apply to all chapter 11 debtors who do not qualify as a "small business debtor" under 11 U.S.C. 101(51D). Nothing in this section shall excuse, supersede, or otherwise modify any applicable nonbankruptcy

reporting obligations, including, but not limited to, those set forth in chapters 2a through 2e of title 15 of the United States Code.

(b) *UST Form 11-MOR, Monthly Operating Report.* Debtors-in-possession (debtor) and chapter 11 trustees (trustee) must file with the court and serve upon the United States Trustee, any official committee appointed under 11 U.S.C. 1102, any governmental unit charged with responsibility for collection or determination of any tax arising out of the estate's operation, and any requesting party in interest monthly operating reports using UST Form 11-MOR (MOR). In jointly administered cases, unless otherwise required by the United States Trustee in the United States Trustee's discretion, each jointly administered debtor is required to file a separate MOR on a nonconsolidated basis. The MOR must contain the following:

- (1) Information about the industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;
- (2) Length of time the case has been pending as of the end of the reporting period;
- (3) Number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;
- (4) Cash receipts, cash disbursements, and profitability of the debtor during the reporting period and cumulatively since the date of the order for relief;
- (5) Asset and liability status as of the end of the reporting period;
- (6) Assets sold or transferred outside the ordinary course of business (with or without court approval) during the reporting period and cumulatively since the date of the order for relief;
- (7) Income statement, commonly referred to as a statement of operations, for the reporting period;
- (8) All professional fees approved by the court in the case during the reporting period and cumulatively since the date of the order for relief (separately reported,



for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not);

(9) Information about whether tax returns and tax payments since the date of the order for relief have been timely filed and made;

(10) Payments made on pre-petition debt during the reporting period;

(11) Payments made outside the ordinary course of business without court approval during the reporting period;

(12) Payments made to or on behalf of insiders during the reporting period;

(13) Postpetition borrowing during the reporting period;

(14) Information about insurance, including workers' compensation, casualty/property, and general liability during the reporting period;

(15) Information about whether disclosure statements and plans of reorganization have been filed with the court during the reporting period; and

(16) Information about the payment of quarterly fees to the United States Trustee during the reporting period.

(c) *Individual chapter 11 debtors.* Individual debtors also must complete Part 8 of the MOR, which includes the following:

(1) Total income during the reporting period, including income from salary, wages, self-employment, and any other source;

(2) Total expenses during the reporting period, including expenses related to self-employment, and unusual or significant unanticipated expenses;

(3) Difference between total income in paragraph (c)(1) of this section and total expenses in paragraph (c)(2) of this section;

(4) Debts (that are not related to self-employment) that were incurred since the petition filing date, which are past due; and

(5) Information about whether all required domestic support obligation payments (as that term is defined by 11 U.S.C. 101(14A)) have been paid.

(d) *Supporting MOR documents.* (1) Unless the United States Trustee in the United States Trustee's discretion provides otherwise, any non-individual debtor or trustee must file with the court and serve upon the United States Trustee, any official committee appointed under 11 U.S.C. 1102, any governmental unit charged with responsibility for collection or determination of any tax arising out of the estate's operation, and any requesting party in interest the following documentation:

(i) Statement of cash receipts and disbursements that shows all cash receipts and cash disbursements for all bank and investment accounts;

(ii) Balance sheet containing the summary and detail of the assets, liabilities, and equity (net worth) or deficit of the estate. The estate's prepetition liabilities and retained earnings must be reported separately from the estate's postpetition liabilities and retained earnings; and

(iii) Statement of operations (profit or loss statement) that compares the estate's actual performance with projected performance.

(2) At the discretion of the United States Trustee, an individual debtor may be required to file with the court and serve upon the United States Trustee, any official committee appointed under 11 U.S.C. 1102, any governmental unit charged with responsibility for collection or determination of any tax arising out of the estate's operation, and any requesting party in interest the documentation identified in paragraph (d)(1) of this section.

(3) At the discretion of the United States Trustee, the debtor or trustee may be required to file with the court and serve upon the United States Trustee, any official committee appointed under 11 U.S.C. 1102, any governmental unit charged with

responsibility for collection or determination of any tax arising out of the estate's operation, and any requesting party in interest the following documentation:

- (i) Accounts receivable aging, which is an aged summary of accounts receivable including total receivables, net of doubtful accounts;
- (ii) Postpetition liabilities aging, which is an aged summary schedule of postpetition liabilities segregated by general payables, amounts owed to professionals, taxes, etc.;
- (iii) Statement of capital assets that identifies the book value of all capital assets on the petition date, the book value at the beginning of the reporting period, any additions or deletions including depreciation, and the book value at the end of the reporting period;
- (iv) Schedule of payments to professionals that identifies all fees and expenses for all professionals employed in the bankruptcy case;
- (v) Schedule of payments to insiders that includes all payments made by the debtor to any person or entity considered an insider under 11 U.S.C. § 101(31);
- (vi) Bank statements and bank reconciliations that reflect all bank accounts and banking transactions;
- (vii) Descriptions of assets sold or transferred outside the ordinary course of business during the reporting period, and the terms of such sales or transfers;
- (viii) Registers or ledgers documenting the estate's cash disbursements during the reporting period;
- (ix) Statement of cash flows during the reporting period;
- (x) Other transactional documents, including real estate settlement documents, contracts, or loan documents for the reporting period; and
- (xi) Other records.

(e) *Deadlines for filing and submitting MOR.* The MOR must be filed with the court and submitted to the United States Trustee on a monthly basis. Unless otherwise provided by local rule, each MOR must be filed by no later than the 21st day of the month immediately following the reporting period covered by the MOR. The MOR must be filed every month until one of the following occurs:

- (1) The effective date of a confirmed plan of reorganization;
- (2) The conversion of the case to a case under another chapter; or
- (3) The dismissal of the case.

(f) *UST Form 11-PCR, Post-confirmation Report.* Following the effective date of a confirmed plan, reorganized debtors and any other authorized parties who have been charged with administering the confirmed plan must file with the court and serve upon the United States Trustee, any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, and any requesting party in interest quarterly post-confirmation reports using UST Form 11-PCR. In jointly administered cases, unless otherwise required by the United States Trustee in the United States Trustee's discretion, each jointly administered debtor, reorganized debtor, or other authorized party who has been charged with administering a confirmed plan is required to file a separate PCR on a nonconsolidated basis. The PCR must contain the following:

- (1) Date the petition was filed and the date of plan confirmation;
- (2) Summary of all post-confirmation amounts disbursed. This summary must be segregated into disbursements during the most recent reporting period and total disbursements since the date of the confirmation order;
- (3) All preconfirmation professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the

debtor, between those that would have been incurred absent a bankruptcy case and those not);

(4) Information regarding the recoveries of holders of claims under confirmed plans. This information must be expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed;

(5) Information on whether a final decree has been entered or is anticipated to be entered; and

(6) Information about the payment of quarterly fees to the United States Trustee during the reporting period.

(g) *Deadlines for filing and submitting PCR.* The PCR must be filed with the court and submitted to the United States Trustee on a quarterly basis. Unless otherwise provided by local rule, each PCR must be filed not later than the 21st day following the last day of the reporting (previous) quarter. The PCR must be filed every quarter until one of the following occurs:

(1) The date of the final decree;

(2) The conversion of the case to a case under another chapter; or

(3) The dismissal of the case.

(h) *Accounting methods.* Generally Accepted Accounting Principles (GAAP) are required to be used when completing the Periodic Reports, except if the debtor used a different set of accounting standards prepetition or if the United States Trustee or an order of the court otherwise modifies the GAAP requirement. If the debtor uses GAAP accounting, supporting documents must comply with GAAP, such as the Financial Accounting Standards Board's Accounting Standards Codification 852, "Reorganizations."

(i) *Certification of Periodic Reports' accuracy.* The Periodic Reports must be certified under penalty of perjury that they are true and correct by an individual who is

authorized under applicable law to certify on behalf of the debtor, trustee, reorganized debtor, or other authorized party who has been charged with administering a confirmed plan. The debtor's, trustee's, reorganized debtor's, or other authorized party's attorney must maintain possession of the Periodic Reports with original holographic signatures for five years, unless otherwise provided by local rule. In addition to the obligations imposed by (l)(2), a pro se debtor must submit the Periodic Reports with original holographic signatures to the office of the United States Trustee in the district in which the bankruptcy case is pending.

(j) *Mandatory usage of Periodic Reports.* The Periodic Reports must be utilized by debtors and trustees when completing their monthly operating reports or post-confirmation reports. The Periodic Reports shall be used without alteration, except as otherwise provided in this rule, in a particular UST Form 11-MOR or UST Form 11-PCR, or in the instructions for UST Form 11-MOR or UST Form 11-PCR. The Periodic Reports may be modified to permit minor changes not affecting wording or the order of presenting information. All debtors and chapter 11 trustees serving in districts where a United States Trustee is serving must use the Periodic Reports in the administration of their cases, in the same manner and with the same content, as set forth in this Rule.

(1) All Periodic Reports may be electronically or mechanically reproduced so long as the content and the form remain consistent with the Periodic Reports as they are posted on EOUST's website; and

(2) The Periodic Reports shall be filed via the United States Bankruptcy Courts' Case Management/Electronic Case Filing System (CM/ECF) as a "smart form," meaning the reports are data-embedded.

Dated: December 8, 2020.

---

Clifford J. White III  
Director  
Executive Office for United States Trustees

[FR Doc. 2020-27715 Filed: 12/18/2020 8:45 am; Publication Date: 12/21/2020]